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In the
Supreme Court of the United States

No. 331

ELLA G. WOOD,

Petitioner,

v.

THE FEDERAL LAND BANK OF OMAHA and LINCOLN JOINT STOCK LAND BANK OF LINCOLN, NEBRASKA,

Respondents.

ANSWER BRIEF OF RESPONDENTS

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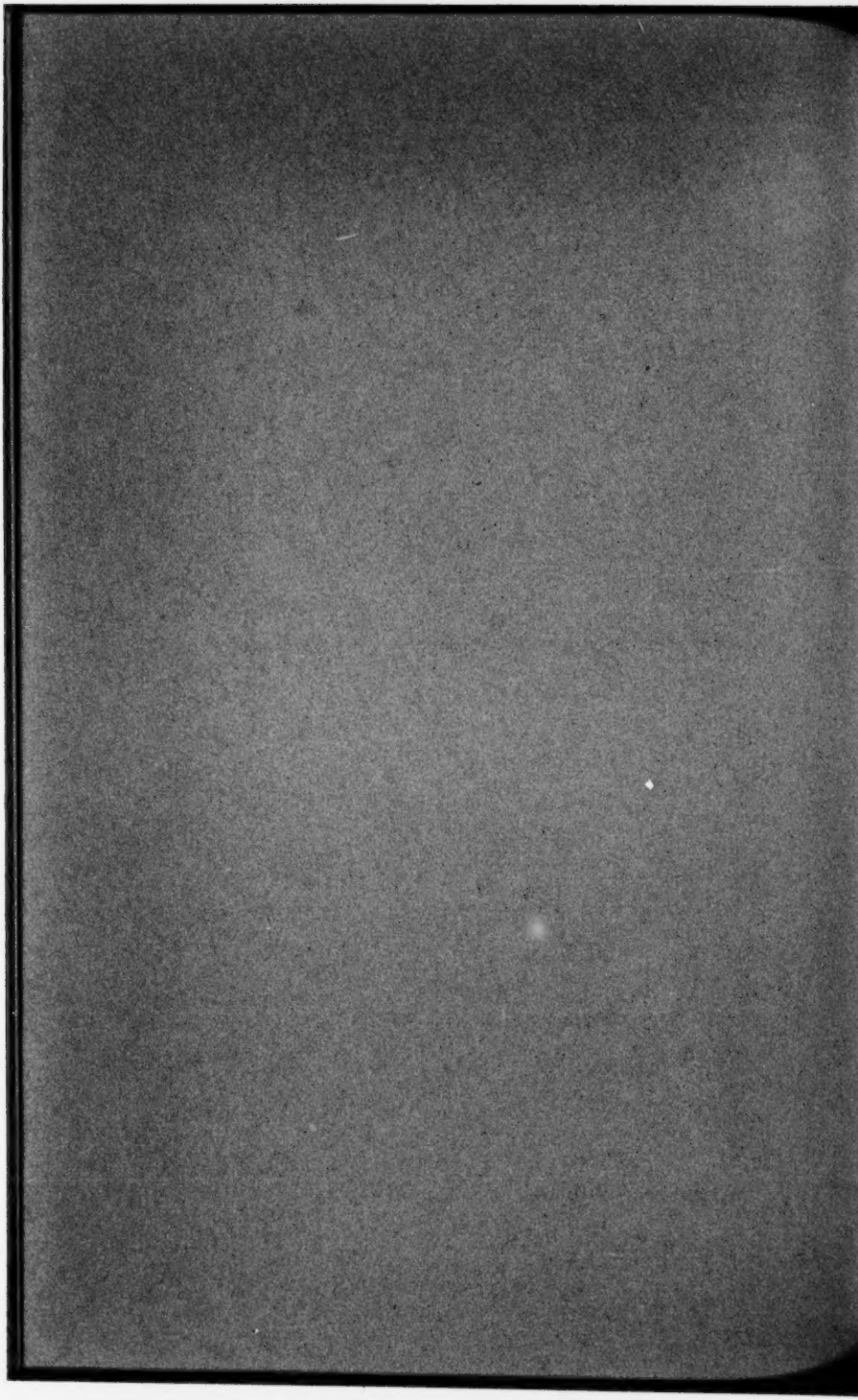

INDEX

	Page
Jurisdiction	1
Summary Statement	2
Statute Involved	2
Argument	2

TABLE OF CASES CITED

Benitez v. Bank of Nova Scotia, 125 F. (2d) 523 3

Dimmitt v. Great Southern Life Ins. Co., et al., 124 F. (2d) 40 3

First Nat'l Bank & Trust Co. v. Beach, 301 U. S. 435 3

Hamberg Bank v. Kitchens, 116 F. (2d) 376 3

Rose Packard Shyvers v. Security Nat'l Bank of Los Angeles, 108 F. (2d) 611, 126 A. L. R. 647 2

STATUTES CITED

Title 11 U. S. C. 203 (r), Bankruptcy Act, Section 75, Subsection (r) 2, 4

Revised Rules of the Supreme Court of the United States, Rule 38 (5), 11 U. S. Digest, page 30 ..... 1, 2, 3

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JURISDICTION

It is the opinion of the respondents that under Section 347 U. S. C. A., Section 240, Judicial Code as amended, this court has jurisdiction to entertain the petition for writ of certiorari of the petitioner. It is also the opinion of respondents that this court should grant the writ if, in exercising its sound judicial discretion as defined in Rule 38(5) of this court, the court deems the relief should be granted.

SUMMARY STATEMENT

Petitioner's primary occupation is teaching school in Chattanooga, Tennessee, and has been for over 20 years past (Tr. p. 111). Otherwise, we believe that petitioner's recitation of the facts and history of the case is substantially correct (Pet. p. 4).

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STATUTE INVOLVED

We agree that the only question involved in this case and decided by the Circuit Court is whether or not petitioner is a farmer within the purview of Section 75, Subsection (r) of the Bankruptcy Act, and it appears that petitioner has correctly quoted that section in her petition.

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ARGUMENT

The petitioner has attempted to set forth three reasons for the allowance of the writ, but none of them "are special and important reasons therefor" as called for in Rule 38(5) of this court.

The Circuit Court did not render a "decision in conflict with the decision of another circuit court of appeals on the same matter" (Rule 38(5)), but on the contrary followed decisions of other circuits on the same matter. Let us call attention to the case of *Rose Packard Shyvers v. Security National Bank of Los Angeles,* 108 F. (2d) 611, 126 A. L. R. 647, in which case the debtor lived in England where she carried on a small scale poultry business, owned 9,300 acres of land in California, the rents from which were her principal income and the Cir-

cuit Court of Appeals, 9th Circuit, held that she was not a farmer. And in the case of *Dimmitt v. Great Southern Life Insurance Co., et al,* 124 F. (2d) 40, the Circuit Court of Appeals, 5th Circuit, held that one who "simply collected his share of the rents" was not a farmer. Also in the case of *Benitez v. Bank of Nova Scotia,* 125 F. (2d) 523, the Circuit Court of the first Circuit held that a housewife who received her share of rent from her interest in farm property was not "personally engaged" in farming operations within the meaning of the definition. Petitioner has not cited a case decided by another circuit court in conflict with the holding in this case, and an exhaustive search of the decisions reveals none.

The decision of the Circuit Court in this case can in no way be said to be "has decided an important question of local law in a way probably in conflict with applicable local decisions" (Rule 38(5)). Petitioner says that the decision is in conflict with *Hamburg Bank v. Kitchens,* 116 F. (2d) 376, of the same circuit. In our opinion there is no conflict, but if there were, surely any court has the power and right and should reverse itself, if it appears that the former decision was erroneous.

The instant matter is not "an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court" (Rule 38(5)). The case of *First Nat'l Bank and Trust Co. v. Beach,* 301 U. S. 435 is cited by petitioner as in conflict with the decision in the instant case. We take the contrary view for in the Beach case this court went to great length and precision in construing the defi-

nition of a farmer as set forth in subsection (r) of Section 75, to such length that it includes all cases with facts and circumstances similar to those in the instant case, and in that opinion we read in part as follows:

> "The picture, however, is distorted if Beach is looked upon as a landlord with rentals unrelated to his primary vocation * * * . *How the case would stand if he had been a merchant or a doctor and had leased a tract of farming land to tenants, we do not have to say.*" (Italics ours.)

We, therefore, submit that the identical question in the instant case was decided inferentially in the Beach case and that the decision in this case is in no way in conflict with this court's decision in the Beach case. Beach was primarily a farmer and the fact that his income from rentals was equal or in excess of his income from his personal farming operations did not and could not change his status; whereas petitioner is primarily a schoolteacher and the fact that the rentals received from the Iowa land equaled or exceeded her income from schoolteaching, did not and cannot change her status.

Let us also call attention to the fact that certiorari was denied by this court in the Shyvers case, supra, in which case the facts were quite similar to the instant case.

Attempt is not made here to traverse the argument of petitioner in her brief, for the entire argument dwells upon how subsection (r) of Section 75 should be construed, but wholly fails to persuade of any good reasons relied on for the allowance of the writ, or cite any authority in support thereof.

Great stress is laid by petitioner on the question of a liberal construction of the statute in favor of the farmer, and several cases decided by this court are cited. We agree that the statute should be liberally construed in favor of a farmer and has been so construed by this court, but has not been and should not be so liberally construed as to make a farmer out of a schoolteacher speculating in equities in land under foreclosure. The most liberal construction possible, under the definition, could not make petitioner a farmer.

The petition for Writ of Certiorari should be denied.

Respectfully submitted,

J. C. Pryor,

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The Federal Land Bank of Omaha.

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Lincoln, Nebraska.